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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/777,344	02/12/2004	A. Wayne Olson	UNICA-002BC	4925

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EXAMINER

SHERR, CRISTINA O

ART UNIT	PAPER NUMBER
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3685

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/777,344	Applicant(s) OLSON, A. WAYNE	
	Examiner CRISTINA SHERR	Art Unit 3685	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 September 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4,8-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4,8-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Office Action is in response to Applicant's Amendment filed September 10, 2009. Claim 1 is currently amended. Claims 1-4 and 8-11 are currently pending in this case.

Response to Arguments

2. Applicant's arguments with respect to claims 1-4 and 7-11 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-4 and 7-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claim 1 recites the limitation "verifying the merchant can cover the wager based upon the amount of available merchant funds . . ." in section f. There is insufficient antecedent basis for this limitation in the claim.

6. For these reasons, independent claim 1 and its dependent claims 2-4 and 7-11 are rejected under 35 U.S.C. 112, second paragraph.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-4 and 7-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abecassis (US 5,426,281) also in view of Walker et al (US 5,794,207) further in view of Scagnelli et al (US 5,415,416).

9. Regarding claim 1 –

10. Abecassis discloses

a) establishing a deposit account for the customer with an escrow account provider;

(abs, col 1 ln 7-15, col 5 ln 65-col 6 ln8);

b) placing an order with a merchant (col 6 ln 65-col7 5, col 8 ln28-40);

c) transferring the funds from the deposit account to a prescribed account (in this case a wager) (col 8 ln 8-28);

e) notifying the merchant that funds have been transferred (e.g. col 9 ln 33-49)

f) verifying that the product is available (col 10 ln 10-25); and

h) transferring funds from the action account to one of the merchant and the customer.

(funds to merchant account are the equivalent of payment to merchant, and funds to customer account are the equivalent of sending customer his product e.g. fig 10, col 7 ln 46-51).

11. Abecassis does not specifically disclose a wager or gaming action. Scagnelli, however, does, see e.g. col 4 ln 55 - col 5 ln 10 where an “open account” is created with customer funds. From there customer funds go to the action account of the lotto or other betting facility during gaming action (e.g. col 5 ln 10-35) where they are held until

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the gaming is complete. At that point, either the customer or the vendor is paid. It would be obvious to one of ordinary skill in the art at the time the invention was made that bets and wagers are products to be bought and sold as such. Thus, it would be obvious to one of ordinary skill in the art to adapt Abecassis by combining with Scagnelli to obtain the instant application, motivated by the need or desire to wager with greater security.

12. Abecassis does not explicitly recite transferring funds to a set aside account subsequent to balance verification. Walker et al. teach transferring funds into a second account (e.g. set-aside account, settlement account) in the amount of a purchase price (column 14, lines 5-7; column 22, lines 1-20). Walker et al. also teach a user sending a signature to an escrow provider to provide verification of delivery (column 22, lines 15-22) and charging a fee by the escrow provider for providing a service (column 20, lines 16-30). Therefore, it would have been obvious to one of ordinary skill to combine the teachings of Abecassis and Walker et al. in order to ensure that a seller delivers purchased goods.

13. Further, it would be obvious to apply prior art to a gambling service such as combining Abecassis and Walker to Scagnelli, thus obtaining a predictable result. *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385 (U.S. 2007)

14. Regarding claim 2 –

15. As in h, above, transferring funds from the action account to one of the merchant and the customer. (in Abecassis, funds to merchant account are the equivalent of payment to merchant, and funds to customer account are the equivalent of sending

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customer his product e.g. fig 4, col 10 20-25). As above, neither Abecassis nor Walker specifically disclose g) transferring the funds to an action account or escrow during pendency of a wager or gaming action. Scagnelli, however, does, see e.g. col 4 ln 55 - col 5 ln 10 where an "open account" is created with customer funds. From there customer funds go to the action account of the lotto or other betting facility during gaming action (e.g. col 5 ln 10-35) where they are held until the gaming is complete. At that point, either the customer or the vendor is paid.

16. Regarding claim 3 –

17. Abecassis discloses approving the order or not approving the order subsequent to verifying whether product is available which is the equivalent of having the current unexpired advertisement in Walker which is the equivalent of having a product be available, which is the equivalent of the merchant having the funds to cover the bet or wager (e.g. col 11 ln 25-50); thus play is suspended or product cannot be bought and sold if product is unavailable.

18. Regarding claim 4 –

19. It would be obvious to one of ordinary skill in the art to resume play or resume sales when product once again becomes available or when merchant once again has the funds where the product is a bet.

20. Regarding claims 8-11 –

21. It would be obvious to apply prior art to a gambling service such as combining Abecassis and Walker to Scagnelli, thus obtaining a predictable result. *KSR*

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International Co. v. Teleflex Inc., 82 USPQ2d 1385 (U.S. 2007). In such case, that accounts would be casino accounts, the merchant would be a casino.

Conclusion

22. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

23. Rossides (US 5,749,785) discloses a communications system using bets.

24. Rossides (US 6,443,841) discloses a communications system using bets.

25. Odom et al (US 6,058,379) disclose real-time network exchange parameters.

26. Any inquiry concerning this communication or earlier communications from the examiner should be directed to CRISTINA SHERR whose telephone number is (571)272-6711. The examiner can normally be reached on 8:30-5:00 Monday through Friday.

27. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Calvin L. Hewitt, II can be reached on (571)272-6709. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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28. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CRISTINA OWEN SHERR
Examiner
Art Unit 3685

/Calvin L Hewitt II/
Supervisory Patent Examiner, Art Unit 3685